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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

EDDIE SPRAGGINS,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1.

Whether the trial court's instructions to the jury during the sentencing phase of Petitioner's trial, when considered as a whole, sufficiently informed said jury that they could consider all of the circumstances of the case, including mitigating circumstances, and that they could impose a life sentence even though they found the existence of statutory aggravating circumstances.

2.

Whether the implementation of the death sentence in this case and the affirmance of same by the Georgia Supreme Court had been accomplished in such a manner so as to insure said sentence was free from arbitrariness or capriciousness and was not disproportionate.

3.

Whether it was necessary for the trial court to give limiting and explanatory instructions relating to the punishment phase of Petitioner's trial in regard to Ga. Code Ann. § 27-2534.1 (b)(7), and in the absence of said instructions, whether the Supreme Court of Georgia properly reaffirmed Petitioner's death sentence.

4.

Whether or not the submission of an additional statutory aggravating circumstance to the jury upon Petitioner's resentencing trial, constituted a violation of the Fifth Amendment ban against double jeopardy or of Petitioner's right to due process.

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PART ONE

STATEMENT OF THE CASE

Petitioner, Eddie Spraggins, was indicted along with co-defendant Freddie Davis, by the February Term, 1977, Meriwether County, Grand Jury for the murder and rape of Frances Coe. Following a jury trial in which Petitioner was separately tried from his co-defendant, Petitioner was found guilty on both counts, and was sentenced to death for the murder conviction and to life for the rape.

As a result of Petitioner's conviction in 1977, an appeal was taken to the Supreme Court of Georgia. Said Court upheld Petitioner's conviction, but granted him a new trial as to sentencing. The Court found that the jurors had not been adequately instructed during the sentencing phase of Petitioner's trial, because the trial court's sentencing instructions failed to make it clear to the jury that they could recommend a life sentence even if they found the existence of a statutory aggravating circumstance, and also failed to inform the jury that they were authorized to consider mitigating circumstances. Spraggins v. State, 240 Ga. 759, 763, 243 S.E.2d 10 (1978). [Hereinafter referred to as Spraggins I].

On May 22, 1978, a new jury for resentencing was selected, and after being presented with substantially the same evidence which the State had presented in Spraggins I, that jury again sentenced Petitioner to death for the murder of Ms. Coe. The Supreme Court of Georgia on appeal from the resentencing trial affirmed Petitioner's death penalty.

Spraggins v. State, 243 Ga. 72, 252 S.E.2d 620 (1979). [Hereinafter referred to as Spraggins II]. On May 27, 1980, certiorari was granted by this Court, the Georgia Supreme Court's affirmance of Petitioner's death penalty was vacated, and the case was remanded for further review by the Georgia Supreme Court in light of this Court's recent decision in Godfrey v. Georgia, 446 U.S. __, 100 S.Ct. 1759 (1980). Spraggins v. Georgia, ___U.S.___, 100 S.Ct. 2935 (1980).

Upon remand, the Georgia Supreme Court again reaffirmed Petitioner's death sentence. Spraggins v. State, 246 Ga. 432, ___S.E.___ (1980). Thereafter, Petitioner filed the instant petition for a writ of certiorari.1/

1/ Petitioner's co-defendant also originally received the death penalty, but his sentence was vacated for the same reason as expressed in Spraggins I. Davis v. State, 240 Ga. 763, 243 S.E.2d 12 (1973). Following a new trial for sentencing, co-defendant Davis was again sentenced to death. Davis v. State, 242 Ga. 901, 252 S.E.2d 443 (1979). As in the Spraggins case, on May 27, 1980, certiorari was granted by this Court and the Supreme Court's affirmance of Davis' death penalty was vacated and the case was remanded for further consideration in light of Godfrey, supra. Davis v. Georgia, ___U.S.___, 100 S.Ct. 2934 (1980). On remand Davis' death penalty was reaffirmed, Davis v. State, 246 Ga. 432, ___S.E.2d___ (1980), and his present petition for certiorari is now pending before this Court. Davis v. Georgia, No. 80-5757.

PART TWO

STATEMENT OF THE FACTS

On January 31, 1977, the body of the victim, Ms. Frances Coe, was discovered in her home in Meriwether County, Georgia. During the trial, Georgia Bureau of Investigation Officer Bert Davis described the condition of the murder victim as follows: "On the bed on the right, Ms. Coe was lying with her head in the direction of the wall, and her feet down onto the floor. She was in a semi-nude condition, panties and panty hose had been pulled down and were still attached to the left foot. She wore a slip which was pulled up here in the area of the breast and had on a green sweater which was open. There were numerous lacerations to the throat. It was cut just practically out. Further examination revealed a deep cut here in her eye which appeared ~~to be a bruise type cut and not a~~ slash. Numerous stab marks and slashes in the chest area and a slash mark on her breast, slash marks in the abdomen area on the left side, one approximately 5 inches. From the top of the vagina up through the navel, Ms. Coe was split open. The intestines were pulled from the stomach and lying on top of her stomach." (T. 40, Spraggins I).

The autopsy which was later performed revealed that the cause of death was due to a loss of blood. There were several wounds to the body which caused the victim to bleed heavily, with the most severe stab wounds being in the upper abdomen and lower chest, including two in the upper abdomen which penetrated the heart. There was also evidence that there had been some manipulation to the victim's sexual organs.

Particularly, there were two areas of injury in the vicinity of the vaginal opening. The second injury consisted of bruising around the vaginal orifice. The autopsy further indicated that there was a considerable amount of hemorrhaging around the urethera, as well as there being a small tear in the vaginal orifice.

During the course of the investigation the law enforcement officers were led to the yard of the Petitioner's residence. With the consent of the Petitioner's mother the law enforcement officers uncovered from a pile of ashes, a zipper and a cloth material which appeared to come from a jacket, as well as a flashlight which had recently been borrowed from the victim. The search of Petitioner's yard was occasioned by virtue of the fact that a neighbor, on the night of the murder, had seen something burning there.

A Georgia Bureau of Investigation agent later confronted Petitioner with the evidence which he had gathered on Ms. Coe's murder. After being advised of his rights, Petitioner voluntarily chose to give a statement. In that statement he implicated Freddie Davis by stating that Davis went to Frances Coe's house on Sunday, January 30, 1977. Petitioner stated that he had been talking about robbing Ms. Coe for quite some time. Petitioner went to the front door of the Coe residence while Davis remained at the back door. In order to gain entrance into Ms. Coe's house he fabricated the excuse that he wanted to use her telephone. Upon gaining entrance, Petitioner attempted to force Ms. Coe to open the back door, but she refused and began to scream. Petitioner proceeded to grab Ms. Coe around the neck and opened the door in order to permit Davis to gain entrance.

Petitioner then dragged Ms. Coe to the bedroom while at the same time keeping his hand over her mouth to prevent her from screaming. Davis told Petitioner to "shut her up." While making this remark Davis handed Petitioner a knife, following which Petitioner proceeded to stab Ms. Coe as well as to cut her throat. Petitioner told the officers that Ms. Coe would not die, and that he kept cutting her. Davis egged him on stating, "You got to finish her off." After eventually subduing Ms. Coe, Petitioner stated that he wiped the blood from his hands, and gave the knife back to Davis. Davis then used the victim's flashlight in order to search for money. Later, behind his house, Petitioner burned the windbreaker that he was wearing. Davis returned the flashlight to the Petitioner after they left Ms. Coe's house.

Additional facts will be recited in the following portion of this brief when necessary to more fully explain Respondent's arguments.

PART THREE

REASONS FOR NOT GRANTING THE WRIT

A. THE TRIAL COURT'S INSTRUCTIONS DURING THE RESENTENCING PHASE OF PETITIONER'S TRIAL DID NOT SUFFER FROM ANY CONSTITUTIONAL DEFICIENCY AS URGED BY THE PETITIONER.

As noted previously, Petitioner's first death sentence was specifically reversed by the Georgia Supreme Court, because the trial judge, during the sentencing phase of Petitioner's trial, failed to instruct the jury that they could recommend a life sentence even if they found the existence of statutory aggravating circumstances, and further failed to inform the jury that they were authorized to consider mitigating circumstances in making their decision on the death penalty. Spraggins v. State, 240 Ga. 759, 763 (1978). Petitioner now argues that his death sentence following his sentencing retrial is still constitutionally defective in that the trial judge, in his written instructions to the jury, neither charged that the jury could consider mitigating circumstances nor that they could impose a life sentence even though aggravating circumstances were found to be present. (Petitioner's brief, pp. 10-14).

Petitioner does not assert that the trial court's oral instructions were erroneous, but focuses solely upon the written instructions which were submitted to the jury. In essence he argues that the trial judge's written instructions so overshadowed and outweighed his oral instructions, that this Court must presume that the oral instructions were either ignored by

the jury or rendered ineffectual. Contrary to Petitioner's assertions, there is absolutely no reason to assume that the jury did not give proper weight and consideration to the trial judge's oral instructions, especially when said instructions were delivered immediately before the jury deliberations began. As evidenced by Petitioner's Appendix E, the trial judge made absolutely certain that the flaws which had caused reversal of Petitioner's first sentence, were cured in this retrial. For example, the trial judge instructed as follows:

> " Under the laws of this State, every person guilty of the offense of murder shall be punished by life imprisonment or death by electrocution. In all cases for which the death penalty may be authorized, the law provides the judge shall instruct the jury concerning any evidence in extenuation, mitigation and aggravation, which the jury may consider in making their decision as to what punishment is to be imposed upon the defendant.
>
> In reaching your determination you are authorized to consider all of the evidence received by you in open court.
>
> You are authorized to consider all of the facts and circumstances of the case.
>
> Ladies and Gentlemen of the jury, in reaching your verdict you are authorized to consider all of the facts and circumstances,

if you find there be any, in mitigation of punishment. In determining whether mitigating circumstances exist, you are authorized to consider all of the evidence produced by the State and the defendant throughout this trial.

Mitigating circumstances are those circumstances which do not constitute a justification or excuse for the crime but which may be considered as extenuating or reducing the moral culpability or blame.

In reaching this verdict, you are not required to find mitigating circumstances in order to recommend the sentence of life in prison. You may recommend a sentence of life imprisonment regardless of whether or not you believe mitigating circumstances exist in this case." (T. 296-297).

* * *

"Now, Ladies and Gentlemen of the jury, a list of these aggravating circumstances that the State contends exist in this case are listed on a piece of paper and will be out with you in the jury room during your deliberations.

Ladies and Gentlemen of the jury, if you do not find that the State has proved at least one of these statutory aggravating

circumstances beyond a reasonable doubt, then you must recommend a sentence of life imprisonment.

If you should find that the State has proved at least one of the statutory aggravating circumstances beyond a reasonable doubt, then you still may, if you so choose, recommend a sentence of life imprisonment.

If you find that the State has proved at least one of the statutory aggravating circumstances beyond a reasonable doubt, then you may recommend that the death penalty be imposed, but you are not required to do so." (T. 299).

The trial court's written instructions which were given to the jury are set out in Petitioner's Appendix F. These instructions simply inform the jury which aggravating circumstances they were authorized to consider from the evidence. Contrary to Petitioner's assertions, Ga. Code Ann. § 27-2534.1(c)[1/] does not require identity content in the oral and written charges. In interpreting Code § 27-2534.1(c) the Georgia Supreme

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1/ Ga. Code Ann. § 27-2534.1(c) reads as follows: "The statutory instructions as determined by the trial court to be warranted by the evidence shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict be a recommendation of death, shall designate in writing, signed by the foreman of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In non-jury cases the judge shall make such designation. Except in cases of treason or aircraft highjacking, unless at least one of the statutory aggravating circumstances enumerated in section 27-2534.1(b) is so found, the death penalty shall not be imposed."

Court has recognized that the written material to be furnished to the jury is purely of a procedural nature, and amounts to nothing more than a formulation of the jury's potential verdicts. Collier v. State, 244 Ga. 553, 569, 261 S.E.2d 364 (1979), cert. den., ___U.S.___, 100 S.Ct. 1346 (1980); McCorquodale v. State, 233 Ga. 369, 377, 211 S.E.2d 577 (1974), cert. den., 428 U.S. 910 (1976).

It is a normal procedure for the trial court, in a criminal case, to instruct the jury as to the particular form that its verdict should assume, once the jury's determination has been made as to the guilt or innocence of a particular defendant. The statutory provision in question merely standardizes the manner in which the practice shall be administered in cases in which a death penalty may be appropriate. Due to the complexity of the Georgia death penalty procedure, and the requirement that the jury designate in writing the particular aggravating circumstance or circumstances it found beyond a reasonable doubt, the Georgia Legislature recognized the necessity of giving the jury a written formulation of its potential verdict.

The operation of this procedure in the instant case did not harm the Petitioner, but only served to clarify to the jury that the death penalty would not be authorized unless it found that at least one of the aggravating circumstances had been proven by the State beyond a reasonable doubt. The interpretation of Ga. Code Ann. § 27-2534.1(c) by the Georgia Supreme Court was reasonable, and is not intended to deprive Petitioner of any of his constitutional or statutory rights. The Georgia Supreme Court's ruling should therefore be controlling on this issue. Mullaney v. Wilbur, 421 U.S. 684, 691 (1975); Wainwright v. Sykes, 433 U.S. 72, 82 (1977).